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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,812	07/02/2001	Gregorio Di Cesare	D-43072-01-W	7774

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CRYOVAC, INC.  
SEALED AIR CORP  
P.O. BOX 464  
DUNCAN, SC 29334

EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/806,812

Applicant(s)

CESARE ET AL.

Examiner

Hai Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-11 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 8-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 07-060816. JP'816 discloses a multiplayer foamed sheet formed by coextrusion and comprising one unformed layer interposed between the two foam polypropylene layers (abstract, page 2, [0012] and figure C). JP'816 discloses the expansion ratio of the first foam layer is 1.2 to 5 times whereas the expansion ratio of the second foam layer is 1.01-1.1 times (abstract). Since the expansion ratios of the two foam layers are different and the expansion ratio dictates the flexural modulus of the foam, it is the examiner's position that the two foam layers would inherently have different flexural modulus. Note In re Best 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102.

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With regard to claims 2, 3, and 10, since JP'816 is using the same materials and the same process, i.e., chemical foaming to make a foam and coextrusion (page 2, [0012], [0013]) to form the multilayer foamed sheet as Applicant, and the multilayer foamed sheet of JP'816 meets all the structures recited by the claims, it is the examiner's position that the density and the flexural modulus would be inherently present within the range as set forth in the claims. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in Ex parte Slob, 157 USPQ 172).

With regard to claims 8 and 9, Figure C of JP'816 shows a non-foamed sheet 3 brought into contact with the sheet 1 that has a greater expansion ratio. The non-foamed sheet 3 is made of a copolymer of a propylene and polyethylene [0012], [0021].

4. Claims 1- 4 and 8-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Harayama et al (US 4,721,643). Harayama discloses a laminated structure formed by extrusion and comprising a non-foamed heat fuse layer 46 sandwiched between the two foam polypropylene layers 44, 45 (abstract, column 3, lines 63-65, figure 13).

Harayama discloses the two foam layers having different expansion factors (column 4, lines 12-13). Since the expansion factor dictates the flexural modulus of the foam, it is the examiner's position that the two foam layers would inherently have different flexural modulus. Note In re Best 195 USPQ at 433, footnote 4

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(CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102.

With regard to claims 2, 3, and 10, since Harayama is using the same materials and the same extrusion process to form the laminated structure as Applicants, and the laminated structure of Harayama meets all the structures recited by the claims, it is the examiner's position that the density and the flexural modulus of the laminate would be inherently present within the range as set forth in the claims. . It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in Ex parte Slob, 157 USPQ 172).

With regard to claims 8 and 9, the surface skin layers 42 and 43 is a non-foamed sheet of a propylene homopolymer (column 2, lines 5-7).

#### ***Allowable Subject Matter***

5. Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the prior art suggests or discloses a thermoformable multi-layer sheet of claim 1 wherein at least on barrier gas layer is positioned between the two foam polypropylene layers.

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

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7. The art rejections and the 112 claim rejections in Paper no. 8 have been overcome by the present amendment and response.


***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
April 16, 2003

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700